A.F.R.

HIGH COURT OF CHHATTISGARH : BILASPUR

Hon'ble Shri Vijay Kumar Shrivastava, J

Criminal Misc Petition No.06 of 2006

Petitioner: Rama Shankar Singh,
s/o. Lalman Singh,
aged about 32 years,
occupation- Agriculture,
r/o. village-Barodhi,
Police Chowki-Bhatgaon,
P.S Pratappur,
Dist. Sarguja (CG)

Vs

Respondent : State of Chhattisgarh
through
District Magistrate, Sarguja (CG)

PRESENT:

Shri Shrawan Kumar Agrawal, counsel for the petitioner.
Shri Arun Sao, Additional Public Prosecutor with Shri Sudhir Bajpai, Dy GA for the State.

O R D E R

(Passed on 31st August 2006)

This petition under Section 482 of the Cr.P.C. has been filed by the petitioner challenging the validity of judgment dated 20/11/2000 passed by Additional Sessions Judge, Surajpur in Criminal Appeal No.69/91, sustaining the judgment of conviction and order of sentence passed by Judicial Magistrate 1st Class, Surajpur.

2) Factual matrix of the case, in brief, is that Judicial Magistrate First Class, Surajpur in Criminal Case No. 791/88 passed judgment of conviction and order of sentence on 27.02.1991 whereby holding petitioner guilty for committing offences punishable under Sections 452 and 332 of

the IPC, sentenced him to undergo RI for two years on each count with a direction to run both the sentences concurrently. Feeling aggrieved, petitioner preferred an appeal before the Court of Sessions. The appeal was registered as Criminal Appeal No.69/91. Ist Additional Sessions Judge fixed the case for hearing on 16.11.2000. On that day, the petitioner (appellant) was absent. Learned appellate Judge without hearing the petitioner (appellant) fixed the case for judgment and subsequently on 20.11.2000, passed the impugned judgment.

3) Section 386 of the Cr.P.C. empowers the appellate Court to decide the appeal. The relevant part of it reads as below : -

> *"386. Powers of the Appellate Court.- After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-"*

4) From bare reading of the above provisions, it is manifest that appellate Court may, where the appeal has been preferred against the judgment of conviction and order or sentence, after hearing the appellant or his pleader, if he appears and the Public Prosecutor if he appears on sufficient ground, either dismiss the appeal or may pass orders as envisaged under Section 386 of the Cr.P.C.

5) The word "if he appears" does not mean that his absence empowers the appellate Court to decide the appeal on merit without hearing the appellant or his pleader. In criminal matter without hearing the convict or his pleader, law is also settled that their matters cannot be decided on merit.

6) Admittedly, appellate Court in place of securing the appearance of appellant, in his absence only after hearing the prosecution has decided the instant appeal on merit. The impugned judgment passed by the appellate court is completely in violation of Section 386 of the Cr.P.C. as well against the law, principle of natural justice and equity.

7) In the result, the petition is allowed, the impugned judgment passed by the appellate Court i.e. Additional Sessions Judge Surajpur is set aside and the matter is remanded back to Additional Sessions Judge Surajpur (lower appellate Court) with a direction to decide the appeal after affording both the parties proper opportunity of hearing in accordance with law.

Sd//-
V.K.Shrivastava
Judge

padma